IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 21 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVARLAL GANESHRAM
Versus
JASIBEN WD/O ISHWARLAL RAMCHAND AND OTHERS

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Appearance :
MR PUNIT JUNEJA for the applicant.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 21/03/2006

ORAL JUDGMENT

The petitioner herein is the original plaintiff of H.R.P. Civil Suit No.995 of 1992. Aforesaid suit was filed by the plaintiff before the Small Causes

Court, Ahmedabad for getting decree for possession of the rented premises from the defendant – tenant on various grounds. Trial Court dismissed the suit against which the petitioner had preferred an appeal being Civil Appeal No.156/2001. Said appeal was heard by the appellate bench of the Small Causes Court, Ahmedabad. Appellate bench dismissed the appeal against which the unsuccessful plaintiff has filed this Civil Revision Application before this Court by invoking provisions of Section 29 (2) of the Bombay Rent Act.

The plaintiff is the owner of the premises consisting of one room and 'osary'. The same was let out to the defendant at a monthly rent of Rs.13/-. The original defendant expired during the pendency of the suit, and, therefore, his heirs were brought on record. The case of the plaintiff is that he had earlier filed a suit being Civil Suit No. 4 of 1997 which was dismissed. The plaintiff purchased the suit property from the earlier owner of the premises viz. Harbhanbhai Valjibhai in the year 1970-71 and at that time the deceased tenant was a sitting tenant. The case of the plaintiff is that the defendant has carried out permanent construction in the suit premises by constructing a small room in front of the 'osary' and the defendant has also constructed a chowkadi, kitchen and bathroom in the marginal land. Decree for possession was also claimed on the ground that the defendant is in arrears of rent for more than six months and that

even though notice was served upon him, he has not paid the rent. It is also the case of the plaintiff that he requires the suit premises for immediate demolition as he wants to erect a new building in place of existing building.

The defendant denied the suit on various grounds.

The learned trial Judge, after recording the evidence and after hearing the arguments of the advocates, came to the conclusion that the plaintiff has failed to prove his case about arrears of rent as well as the ground of permanent construction alleged to have been carried out by the defendant. Trial Court also negatived the claim of the plaintiff that plaintiff requires suit premises for demolishing it in order to erect a new building in place of existing one. Accordingly, trial court dismissed the suit.

The plaintiff carried the matter further in appeal by filing Civil Appeal No. 156 of 2001. The appellate Bench of the Small Causes Court, Ahmedabad by impugned order dated 23.06.2005 dismissed the appeal, against which the original plaintiff has filed this Revision Application under section 29 (2) of the Act.

Mr. Punit Juneja, learned advocate for the applicant vehemently submitted that both the Courts

below have committed an error of law in not considering the case of the plaintiff about getting decree for possession on the ground of permanent structure. He submitted that the suit was required to be decreed on the ground of arrears of rent as well as on the ground of requirement of the premises for demolition of the suit premises as the plaintiff wanted to erect a new building.

So far as the question regarding construction of permanent structure is concerned, it is required to be noted that it is an admitted fact that the plaintiff has not examined any expert witness to point out that the construction is such which cannot be removed without damaging the property. Section 13 (1) (b) of the Act reads under:

> "13. when the landlord may recover possession
> (1). Notwithstanding anything contained in this Act but subject to the provisions of section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied:
> (a). xx xx xx xx xx
> (b). that save as otherwise provided in section 23A, the tenant has without the landlord's consent given in writing, erected on the premises any permanent structure; or .
> xx xx xx xx xx
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> [Explanation. For the purpose of clause (b)

no permanent structure deemed to be erected on any premises merely by reason of construction of a partition wall,door or lattice work or the filling of kitchen stand or such other alterations made in the premises as can be removed without serious damage to the premises.]”

In paragraph 16 of the judgment, the appellate Bench has observed as under:

“16. We have given thoughtful consideration to the submission of both the sides. The burden to prove the permanent construction lies on the shoulder of the plaintiff. It was contended by Mr. Vasu, learned advocate for the respondent that the defendant has covered the osary and converted into a room during the pendency of this suit. But the plaintiff has no documentary evidence to show that when the defendant has converted the said osary into room. It is pertinent to note that in the cross-examination, the plaintiff has categorically admitted that at the time of letting the suit premises was consisting of one room and osary and when he used to go to collect the rent in the year 1971 there was cement sheets on room and osary and at present also there are cement sheets on room and osary. Therefore, the submission of Mr. Vasu is against the

admission made by the plaintiff in h is oral evidence. So far the construction of otta is concerned, there is no sufficient evidence to prove that covering of is a change of permanent nature. The plaintiff has not examined any expert to prove that the impugned construction on ota is of permanent nature which cannot be removed by causing serious damage to the suit premises. If we peruse the commissioner report at exh. 66, it cannot be said that covering of ota amounts to construction of permanent nature. As discussed above, the oral version of the plaintiff is not sufficient and reliable evidence of permanent construction. It is a matter of record that during the pendency of the suit, the plaintiff had moved an amendment application at Exh. 54 in the y ear 2000, alleging that the defendant has made construction in osary portion converting the osary into a room and he has also made ota portion and constructed a chowkadi. The defendant has denied this allegation. It is significant to note that the plaintiff has not examined any neighbour to show that the defendant has made alleged permanent construction during the pendency of this suit. Even the Court Commissioner report is not supporting the plaintiff's case that the impugned construction is of permanent nature. As per the Court Commissioner Report, at Exh.

> 66, ota portion marked as 'A' is open and the flooring of said ota portion 'A' is made of rough stone pieces. We are of the opinion that by this evidence it is not proved that erecting of ota and making of chowkadi is of permanent nature which cannot be removed without causing serious damage to the suit premises. It is significant to note that the plaintiff has produced photograph vide exh.65, even though they are not exhibited, but if we peruse those photographs, we cannot say that open ota portion and covered ota portion and chowkadi are of permanent nature."

Both the courts below have concurrently found that no decree for possession can be granted on the aforesaid ground of permanent construction. Mr. Juneja is not in a position to point out as to how the finding of fact recorded by the Courts below is contrary to law. In its limited jurisdiction under section 29 (2) of the At, this Court is not expected to re-appreciate the evidence on record. Considering the reasonings of the courts below, I do not find any substance in the arguments of Mr. Juneja that decree for possession was required to be passed for erection of permanent structure as provided under section 13 (1)(b) of the Act.

So far as the case of the plaintiff regarding non-payment of rent is concerned, it is required to

be noted that the tenant had already paid the rent in response to the notice sent by the landlord. The appellate bench has clearly found in paragraph 11 of its judgement that on receipt of notice the tenant had sent more than the due rent by way of Money Order. It is found that said rent was paid within one month from the receipt of the notice. It was rightly found that there was no cause of action for the plaintiff to file the suit on the ground of arrears of rent. It is also found by the appellate Court that demand notice was delivered to the defendant on 4-4-1992, whereas the suit was filed on 1-5-1992, i.e., within a period of one month from the receipt of notice by the tenant. After service of notice the plaintiff was required to wait for a period of one month as required by Section 12 (2) of the Bombay Rent Act, instead the suit was filed without waiting for one month period as required by law. The appellate bench, therefore, has rightly found that the suit was premature.

Mr. Juneja also made an attempt to convince the Court that the courts below erred in not passing a decree for possession on the ground of requirement of the suit premises by the landlord for demolition and construction of a new premises.

The appellate bench has considered this aspect in paragraph 19 of its judgement. It is rightly found that except bare words of the plaintiff, there is no other evidence on record to show that the plaintiff

has got sanctioned plan for the purpose of constructing new building. There is nothing to show that any such plans were sanctioned by the local authority. The plaintiff has not produced any documentary evidence to show that he was having necessary funds to erect new building. Under these circumstances, the appellate bench was justified in rejecting the claim of the plaintiff for getting possession of the suit premises on the aforesaid ground. Aforesaid findings recorded by the appellate bench is based on evidence on record and the same is not required to be interfered with by this Court in a revision application under Section 29 (2) of the Bombay Rent Act.

In view of above, I do not find any substance in this Civil Revision Application. It cannot be said that the Courts below have committed any error of law, which is required to be corrected by this Court in its revisional jurisdiction. Finding of fact recorded by both the Courts below is based on evidence on record. Therefore, I do not find any merits in this application. Accordingly, this Civil Revision Application is rejected summarily.

[P. B. MAJMUDAR, J.]

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